

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
JOSEPH GUGLIELMO, on behalf of himself :
and all others similarly situated, :

Plaintiff, : 20-CV-5921 (VSB)

-against- :

ASSOULINE, INC. et al., :

Defendants. :

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ORDERVERNON S. BRODERICK, United States District Judge:

Under the Federal Rules of Civil Procedure, “[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). “[I]f the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.” *Id.* “Good cause is generally found only in exceptional circumstances where the plaintiff’s failure to serve process in a timely manner was the result of circumstances beyond its control.” *E. Refractories Co. v. Forty Eight Insulations, Inc.*, 187 F.R.D. 503, 505 (S.D.N.Y. 1999) (internal quotation marks omitted).

On July 30, 2020, Plaintiff filed this action against Defendant Assouline, Inc. (Doc. 1.) Plaintiff obtained a summons for Assouline, Inc. on July 31, 2020. (Doc. 4.) On October 7, 2020, Plaintiff filed an amended complaint against Defendants Assouline, Inc. and Assouline Publishing, Inc. (Doc. 5.) Plaintiff obtained a summons for Assouline Publishing, Inc. on October 8, 2020. (Doc. 7.) Since that time, Plaintiff has not filed affidavits of service or taken any other action to prosecute this case.

On January 11, 2021—when service was already overdue—I issued an order requiring

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Plaintiff to submit a letter of no more than three (3) pages, supported by legal authority, demonstrating good cause as to why this case should not be dismissed pursuant to Rule 4(m), by January 19, 2021. (Doc. 8.) I warned Plaintiff that failure to comply with the order would result in dismissal of this case. (*Id.*) Plaintiff has failed to comply with my order. Plaintiff has also failed to demonstrate good cause that would prompt me to extend the time for service. *See* Fed. R. Civ. P. 4(m).

Accordingly, it is hereby:

ORDERED that, in accordance with Rule 4(m), Plaintiff's claims against Defendants Assouline, Inc. and Assouline Publishing, Inc. are DISMISSED WITHOUT PREJUDICE. The Clerk is respectfully directed to close the case.

SO ORDERED.

Dated: January 25, 2021
New York, New York



Vernon S. Broderick
United States District Judge